



Image AF/1771

In the United States Patent and Trademark Office

Appellant:	Forte	Docket No.:	13969.1
Serial No.:	09/374,117	Group:	1771
Confirmation No:	3340	Examiner:	Terrel H. Morris
Filed:	08/16/1999	Date:	January 14, 2004
For:	Multilayer Breathable Film and a Method for Making a Multilayer Breathable Film		

Reply Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 1.192 Appellant respectfully submits this Reply Brief in response to the Examiner's Answer mailed November 18, 2003.

In accordance with 37 C.F.R. 1.192(a) this Reply Appeal Brief is filed in triplicate.

The following remarks address comments made in certain sections of the Examiner's Answer.

Summary of the Invention

Appellant acknowledges with appreciation the Examiner's notation of deficiency in the Summary contained in Appellant's Brief which failed to include cross-references by page and lines to Appellant's specification. The corrected Summary is provided below:

Summary of the Invention

The present invention is directed to a multilayer film of at least three layers (p. 7, li. 4 and p. 9, li. 13-15) and particularly suited for medical applications providing a barrier to microorganisms and blood and other bodily fluids (p. 5, li. 1-5). In accordance with the invention, the film includes outer, substantially particulate filler free, monolithic layers of a hydrophilic polymer (p. 6, li. 12-15 and p. 9, li. 13-16). These layers are bonded using a filled adhesive microporous core layer that is a barrier to liquid but allows gaseous water, i.e. moisture vapor, to pass (p. 15, li. 10-20) due to the presence in the core layer of microvoids in the range of about 27.6% to about 42% (p. 48, li. 10 to p. 49, end). The filler is further defined in terms of particle size (p. 13, li. 3-8).

Preferred claimed embodiments are coextruded films (p. 19, li. 9-11), and ranges of specific volume ratios for the three film layers (p. 9, li. 20 – p. 10, li. 2).

Prior Art of Record

Appellant notes that the final rejection is based on anticipation under 35USC102(e) relying on McCormack et al. USP 6,075,179 alone. The Examiner's Answer relies also on USP 5,011,698 to Antoon, Jr. et al. which, while of record, formed no part of the Examiner's final rejection. Therefore, Appellant has not previously had an opportunity in this appeal to address this rejection based on the combination of references. It is appropriate to reopen prosecution to give Appellant that opportunity.

Grounds of Rejection

As noted, the rejection ground has changed from being based on McCormack et al. alone to a combination of McCormack et al. and Antoon et al. The Examiner's point regarding Antoon et al. as tacitly admitted by Appellant to teach porosity parameters of the claims on appeal is believed to be without justification. Since Antoon et al. was not mentioned in the final rejection, an asserted admission based on Appellant's failure to address it should not be allowed to stand.

The Examiner's reliance on In re Spada is believed to be misplaced. Appellant agrees with the Examiner's summary of the holding in that case but respectfully urges that it is inapplicable to Appellant's claims on appeal. Specifically, that case was concerned with composition claims where the chemicals were identical. As pointed out in Appellant's Brief, the general class of polyolefins includes many variations as to stereospecificity, molecular weight, molecular formulae, catalysts and others which can affect properties widely. It simply cannot be considered that the compositions compared are identical in the sense of In re Spada, in Appellant's view.

Similarly, the Examiner's Answer equates Appellant's claimed adhesive microporous core to the McCormack et al. core simply because the layers adhere and may include polymers from the same broad class. Although the claims of McCormack et al. are not limited in this regard, there is no teaching regarding the use of an adhesive core as in the claims on appeal.

Conclusion

For the above reasons as well as those stated in the Brief, it is respectfully submitted that the rejections of Appellant's claims are in error and should be reversed.

Please charge any applicable fees to deposit account number 11-0875.

The undersigned may be reached at (770) 587-8096.

Respectfully submitted,

Forte

By: 

William D. Herrick

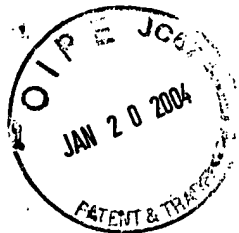
Registration No.:25,468

CERTIFICATE OF MAILING

I, William D. Herrick, hereby certify that on 14-Jan-04, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 

William D. Herrick



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